

WISCONSIN LEGISLATIVE COUNCIL STAFF

RULES CLEARINGHOUSE

Ronald Sklansky
Director
(608) 266-1946

Richard Sweet
Assistant Director
(608) 266-2982



David J. Stute, Director
Legislative Council Staff
(608) 266-1304

One E. Main St., Ste. 401
P.O. Box 2536
Madison, WI 53701-2536
FAX: (608) 266-3830

CLEARINGHOUSE RULE 95-195

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]

1. Statutory Authority

Section NR 48.04 (3) provides that the department’s investigation of an application for withdrawal may include the holding of a public hearing or informational meeting when deemed necessary by the department. A similar provision is contained in s. 28.11 (11) (a), Stats. However, the statute also requires the department to hold a public hearing if requested in writing by a county making a withdrawal application. The rule should not be drafted or interpreted to exclude this statutory requirement.

2. Form, Style and Placement in Administrative Code

a. The department’s analysis does a good job of providing background and context for the rule but the explanation of the rule itself is minimal. Consideration should be given to determining whether the description of the rule in the analysis can be expanded without replicating the substance of the rule.

b. In s. NR 48.02, “given” should be substituted for “established” in subs. (2) to (6). [See s. 1.01 (7) (c), Manual.]

c. In s. NR 48.03 (1) (intro.), “shall” should precede “include” and the phrase “in connection with the land subject to the application” should be inserted following the word “information.” The latter insertion will allow deletion of awkward references to “subject to the application” that appear in the paragraphs that follow the introductory clause.

d. The Note to s. NR 48.03 (1) (intro.) should contain addresses to the offices referenced. [See s. 1.09 (2), Manual.]

e. In s. NR 48.03 (1) (e), it is suggested that “compliance with” be inserted after “assure” and “are complied with” be deleted.

f. Section NR 48.03 (1) (f) can be stated simply as follows: “A copy of the county resolution authorizing filing of the application.”

g. In s. NR 48.03 (1) (g), “that relate to” should be substituted for “for” and “or areas” should be inserted preceding “were considered.”

h. In s. NR 48.03 (1) (j), “on the land” should follow “waters.” [This assumes deletion of the phrase “subject to the application.”]

In light of the definitions of “application” and “application for withdrawal,” the following language should be deleted from s. NR 48.03 (2): “under s. 28.11 (11), Stats., including any required attachments or studies as part of the application” and “or accompanying studies are.” The latter phrase should be replaced by “is.”

i. It is suggested that the title to s. NR 48.04 be expanded to read: “DEPARTMENT INVESTIGATION AND FINDINGS.”

j. Section NR 48.04 should be reorganized as follows: the (intro.) should be renumbered sub. (1) (intro.); subs. (1), (2) and (3) should become pars. (a), (b) and (c); sub. (4) should be renumbered sub. (2); and the last sentence in the material following sub. (4) (L) (intro.) should become sub. (3) and the subdivisions that follow should be renumbered as paragraphs.

k. In s. NR 48.04 (intro.), “under s. 28.11 (11), Stats.,” should be deleted [again, see the definition of “application for withdrawal”] and “is” should follow “but” and “be” should be eliminated.

l. In s. NR 48.04 (4) (intro.), “but is not limited to” should be substituted for “but not be limited to.”

m. In s. NR 48.04 (4) (h), it is unnecessary to include “Wisconsin environmental policy act (WEPA).”

n. In the last sentence of s. NR 48.04 (4) (L) (intro.), “but not be limited to” should be replaced by “but is not limited to.”

o. In s. NR 48.05 (intro.), “under s. 28.11 (11), Stats.,” should be deleted.

p. In s. NR 48.06 (intro.), “is subject to the following” may be deleted. In subs. (1) and (2), “The land” may be deleted.

4. Adequacy of References to Related Statutes, Rules and Forms

a. Section NR 48.03 (1) (intro.) refers to “department forms.” If new forms are created by the department for county forest withdrawal, the agency should ensure that the requirements of s. 227.14 (3), Stats., are met.

b. In s. NR 48.03 (1) (d), the reference to “subch. II, ch. 19, Stats.,” needs revision. The only information under that subchapter that is considered and treated as confidential is set forth in s. 19.36, Stats. For all other information, the custodian must invoke the common law balancing test in order to withhold access to the information. Perhaps a better way to state the intent of the rule is as follows: “unless the information is confidential under federal or state law or the legal custodian of the information withholds the information under subch. II, ch. 19, Stats.”

c. In s. NR 48.03 (3), a cross-reference is needed to determine which decision is being referenced. Is it the decision under sub. (2) or the decision under s. NR 48.05? Note, also, that “on it” should be deleted.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. In s. NR 48.03 (4) (k), it is not clear which land is being referred to in connection with the requirement of a description of “the proposed use and disposition.”

b. In s. NR 48.04 (3) (i), should “the” replace “a”?

c. In s. NR 48.04 (4) (k), it appears that the phrase “the law” should be replaced by a cross-reference to s. 28.11, Stats.

d. In s. NR 48.04 (4) (L), the word “their” should be replaced by the word “its.”

e. In s. NR 48.04 (3) (L) 3., it appears that the comma after “values” should be deleted and, in subd. 7., the comma after “land” should be deleted, a comma inserted after the first “forest” and the second “and” deleted.

f. In s. NR 48.05, is it clear how sub. (2) differs from sub. (1)?